IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1310 OF 2006

Abdul Waheed Abdul Aziz Qureshi ... Petitioner

Vs.

State of Maharashtra & Anr. ... Respondents

Mr. Niyaz Ahmed for the petitioner.

Ms. M.M. Deshmukh, A.P.P. for the State.

Mr. S.P. Bharat for respondent 2.

**CORAM : SMT. RANJANA DESAI, J.**

**DATED : 15TH DECEMBER, 2006.**

**P.C. :-**

1. The petitioner has challenged order dated 10/12/2004 passed by the 45th Metropolitan Magistrate at Kurla, Mumbai and the order dated 10/3/2006 passed by the Additional Sessions Judge, Bombay.

2. It appears that the petitioner has filed a private complaint against the Divisional Manager, Shriram Transport & Finance Company Limited i.e. respondent 2 herein and one Irfan Alli and two other accused persons, whose names are not known to him, in the Court of Metropolitan Magistrate, 45th Court at Kurla, Bombay. It is the case of

the petitioner that accused 1 i.e. respondent 2 herein entered into a Hire Purchase Agreement dated 18/2/2003 with him in respect of Vehicle No.MH-04-H-6378 (for convenience, “the said vehicle”). The accused provided him the installment schedule. According to the petitioner on 7/7/2003, two persons from the company of accused 1 came to his house informing him that they wanted to take away the said vehicle. He reported the matter to the police. The case of the petitioner is that on 8/7/2003 at about 4.30 p.m., when the said vehicle was being driven by his driver towards Vashi a jeep overtook the said vehicle. The jeep was parked in front of the said vehicle. Accused 2 and his associates rushed upon the petitioner's driver; put him in fear; snatched the key and took the vehicle away. The matter was reported to the police. According to the petitioner, the police asked him to approach the court and, hence, he filed the instant complaint.

3. It appears that during the pendency of this matter, the petitioner filed an application for issuance of search warrant for the said vehicle. Search warrant was issued. Thereafter, the accused appeared in the court. Both the parties made applications for return of the said vehicle. By an interim order, the custody of the vehicle was handed over to the accused and the applications were disposed of. It appears that the matter then travelled upto this court and this court directed the trial court

to dispose of the applications for return of the said vehicle. In pursuance of this order, the matter was heard and the learned Magistrate by his order dated 10/12/2004 directed that the said vehicle shall be returned by the accused to the complainant within a month from the date of the order. The petitioner was directed to execute bond of Rs.3,50,000/-. The petitioner was directed to deposit the said amount towards loan instalment at the rate of Rs.7,875/- per month on or before 10th day of each month in the trial court. The learned Magistrate permitted the accused to withdraw this amount after furnishing bank guarantee.

4. This order was challenged by the petitioner in the Sessions Court. The Sessions Court rejected the revision application. The petitioner has, therefore, approached this court.

5. I have heard Mr. Ahmed, the learned counsel appearing for the petitioner. Mr. Ahmed contended that the impugned orders are illegal and perverse and deserve to be set aside. He submitted that the petitioner is the absolute owner of the said vehicle. He submitted that in fact, the petitioner has not taken any loan from the respondent. The loan was taken by one Mohammed Aktar Khan and all the documents which are allegedly taken from the petitioner and which allegedly contain the petitioner's signature are false and forged. In respect of this,

a civil suit is filed before the City Civil Court at Bombay. In the said suit, the petitioner has prayed for cancellation of the said documents. The learned counsel relied on the judgment of the Supreme Court in ***Rajendra Prasad v. State of Bihar and another, 2001 AIR SCW 2289*** where the motor vehicle was lying in the compound of the police station. The Supreme Court directed that temporary custody of the said motor vehicle be handed over to ostensible name holder in the registration certificate. The learned counsel submitted that till such time as the rights of the parties are decided, in the light of the judgment in ***Rajendra Prasad's case (supra)***, the said vehicle may be handed over to the petitioner.

6. The learned counsel appearing for respondent 2, on the other hand, submitted that the stand taken by the petitioner is fraudulent. He drew my attention to the affidavit of one Sanjeev Namdev Sawant, the Divisional Manager of respondent 2 and the annexures thereto and contended that this petition should not be entertained.

7. I have perused the affidavit of Mr. Sanjeev Sawant and the annexures thereto. Declaration dated 19/2/2003 made by the petitioner clearly indicates that finance was sought from respondent 2 in the name

of M/s. Shaheen Roadways for Rs.1,65,859/- against the said vehicle by cheque dated 18/2/2003 furnished in favour of M/s. Shaheen Roadways, a firm run by the petitioner and Mohamed Akthar Khan. In the circumstances, in my opinion, it is not necessary to interfere with the impugned order. Since the petitioner has filed a civil suit, whether all the documents, which according to respondent 2 are executed by the petitioner, are genuine or not will be decided in that suit. Civil court's decision in that behalf will be final. So far as the custody of the said vehicle is concerned, the petitioner can execute the bond, deposit the instalments and take custody of the vehicle. Since the respondent is permitted to withdraw it after furnishing bank guarantee, the petitioner is sufficiently protected.

8. So far as the judgment of the Supreme Court in ***Rajendra Prasad's case (supra)*** is concerned, even in that case, the vehicle was ordered to be released on execution of bond. Similar order is passed in this case. Therefore, the said judgment does not help the petitioner. There is no merit in the petition. Petition is rejected.

[SMT. RANJANA DESAI, J.]